

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5955 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHARAT PRANLAL JAISWAL

Versus

REGIONAL TRANSPORT OFFICER & TAXATION AUTHORITY

Appearance:

MR BN KESHWANI for Petitioner
MR CC BHALJA AGP for Respondent

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 02/02/98

ORAL JUDGEMENT

Rule.

1. Learned AGP Shri Bhalja waives service of Rule.
With the consent of learned advocates, this petition is finally heard today.

2. The grievance which the petitioner has ventilated in the petition is with regard to refusal by the respondent of grant of fitness certificate in respect of

vehicle bearing registration no. GJ-3-T-9657. It has been submitted by learned advocate Shri B.N. Keshwani appearing for the petitioner that though the vehicle referred to hereinabove is roadworthy, the respondent-authority is not granting certificate of fitness showing roadworthiness of the vehicle only because of the fact that the appeal bearing no. BMC Tax Appeal No. 28/97 filed by the petitioner on 31st July, 1997 is pending with the Director of Transport, State of Gujarat. Another grievance which learned advocate has ventilated on behalf of the petitioner is that the respondent-authority is not accepting advance tax with respect to the abovereferred vehicle. It has also been submitted by learned advocate Shri Keshwani that the respondent-authority is not renewing contract carriage permit on the ground that the abovereferred appeal filed by the petitioner is pending before the Director of Transport, State of Gujarat.

3. Learned AGP Shri C.C.Bhalja appearing for the respondent has submitted that the petitioner has already filed an appeal on 31st July, 1997 being BMC Tax Appeal No.28/97 with regard to the some dispute about non user of the vehicle in question during August, 1994 and October to December, 1994. It has been submitted by Shri Bhalja that if the petitioner fails in the said appeal the petitioner will have to make payment of the amount referred to in the notice dated 14th February, 1997, a copy of which is annexed as Annexure-A to the petition. It has been admitted by Shri Bhalja that due to pendency of the said appeal no action is taken by the respondent authority in relation to the petitioner's application for issuance of certificate of fitness, renewal of contract carriage permit etc. He has submitted that if the petitioner fails in the said appeal and if he does not pay the amount payable by the petitioner, the State Exchequer will suffer adversely and, therefore, applications given by the petitioner are kept pending at present.

4. Learned advocate Shri Keshwani has made statement in pursuance of instructions received from the petitioner that in the event of finally failing in the appeal referred to hereinabove, the petitioner shall make payment of fine etc. to the respondent-authority as might be directed by the respondent-authority. He has further submitted that an undertaking to that effect shall be filed with the respondent on or before 10th February, 1998.

5. If such an undertaking is filed and if the

interest of the State is sufficiently secured, I see no reason for the respondent-authority to refuse contract carriage permit on the abovereferred ground only. Moreover, if the vehicle is roadworthy, subject to other conditions, the respondent-authority should also issue certificate of fitness to the petitioner. The advance tax if any, to be paid by the petitioner should also be accepted by the respondent-authority.

6. Learned AGP Shri Bhalja appearing for the respondent has submitted that upon undertaking being filed by the petitioner as stated hereinabove, the respondent-authority shall issue necessary certificate in accordance with law and shall also accept advance tax and do the needful for renewal of contract carriage permit.

7. In view of the above position, the petition is allowed. It is hoped that the applications which the petitioner has filed or which the petitioner might file, shall be entertained by the respondent-authority as soon as possible if an undertaking referred to hereinabove is filed by the petitioner. Rule is made absolute with no order as to costs. Direct service permitted.

Amp/-